IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3424 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMILABEN W/O RAMESHBHAI B PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR BK DAVE for the Petitioner.

Mr.Gori, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/06/2003

ORAL JUDGEMENT

The petitioner is a lady detenu. She is detained as a bootlegger by order dated 14.11.2002. Along with the detention order, the petitioner is also served with

the grounds of detention. In the grounds of detention, there is a reference about two criminal cases, which are filed against the petitioner under the provisions of the Bombay Prohibition Act. The last registered case is dated 15th September, 2002. The learned advocate for the petitioner submitted that the last registered case is dated 15th September, 2002 and the impugned order is passed after about two months, i.e. on 14th November, 2002. It is submitted that in view of the delay in passing the detention order, the order is required to be quashed. It is submitted that if really the intention in passing the detention order is to curb the activities on the part of the petitioner, it was not necessary to wait for such a long time. This averment is not controverted. Of course, Mr.Gori, learned AGP, states that some time may be given for filing a reply. He submitted that some statements of witnesses were recorded at a later point of time, but, in my view, it is not necessary that the authority should wait for recording the statements of witnesses once it is brought to its notice that cases are registered against the petitioner.

Learned Advocate for the petitioner has relied upon the decision rendered by a learned single Judge of this Court in Special Civil Application No.5321 of 2002 on 29th August, 2002. In the said decision, this Court (Coram : R.P. Dholakia, J.) has held as under :-

> " ... ...
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> 4. It appears that the last offence is registered against the detenu on 28/3/2002 and the order of detention has been passed on 30/4/2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.
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> ... ..."

Considering the aforesaid aspect of the matter and considering the judgment of the learned single Judge, as referred above, the order of detention is required to be set aside on the ground of delay in passing the

detention order from the last registered case.

In the above view of the matter, the petition is allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless she is required in connection with any other case. Rule is made absolute.

4th June, 2003 (P.B. Majmudar, J.)

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(apj)